

REMARKS

Claims 1-17 are at issue and stand rejected. No claims have been allowed.
Independent claims 1 and 11 have been amended.

The Examiner has rejected claims 1-17 under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 4,471,757 to Rogers (hereinafter "Rogers" or "'757") in view of U.S. Patent No. 4,280,475 to Truran (hereinafter "Truran" or "'475").

The '757 patent to Rogers discloses a hollow rectangular box having holes on its top, sides, ends and bottom. The top of the '757 device is spaced from the top of the fireplace grate by several inches. (See Figs. 3-6.) The '757 device is intended for natural "logs," by which is meant "either a whole, round segment of a tree trunk or limb, or a piece of such a segment that has been split for easier burning." '757 patent, Column 1, lines 38-40. Further, Rogers teaches that it is "necessary to use aged wood that is relatively dry" with the disclosed accessory. Id. at lines 62-63.

Applicant has studied the '757 patent carefully, and there is no teaching nor even a hint anywhere therein that the disclosed device could or should be used with a "synthetic firelog," as that term is used in Applicant's specification, and for good reason. The Rogers device "causes a draft to be swept into the side, end, and bottom openings in the box, which flows out the top openings and curls around the log on top of the support . . ." '757 patent, Column 1, lines 67 - Column 2, line 3. The '757 patent thus deals with problems in maintaining a lit fire when burning only one or two natural logs. It does this by increasing the airflow and thus the amount of oxygen available around the logs.

The '475 patent to Truran was cited for its disclosure of a conventional fireplace grate structure.

In stark contrast to the '757 patent to Rogers, amended claim 1 calls for the connecting member and elongate members to have a uniform cross section and a diameter of between 3/8 - 7/8 inches. This means that the top of the accessory is spaced from the bars of the grate by a dimension that is equal to the diameter, namely, between 3/8 - 7/8 inches. This is also recited in amended claim 1. By contrast, the top of the '757 device is spaced from the top of the fireplace grate by several inches. Since the cited references do not disclose all of Applicant's claim limitations, a section 103 rejection cannot be sustained. The Examiner is therefore respectfully requested to withdraw the rejection.

Beyond the plain structural distinction between Applicant's claim 1 and the Rogers device, however, the Rogers device teaches directly away from Applicant's invention. That

is, the Rogers device keeps natural logs lit by increasing airflow and thus oxygen thereto. However, such an approach is not only unnecessary with synthetic logs, it would destroy their fundamental benefit by *decreasing* their total burn time. A synthetic log is typically formed from a mixture of sawdust and petroleum wax. Applicant's Spec., page 1, lines 15-20. Synthetic logs do not need increased oxygen because they are formed instead of a more highly combustible material than real wood. Synthetic logs work by "adding fuel to the fire," as it were, not by adding additional oxygen.

The objective of Applicant's invention is to *increase* the burn time of a synthetic firelog, as is made abundantly clear from the title of Applicant's application. However, using a synthetic log with the Rogers device would destroy this fundamental objective by increasing the airflow and thus available oxygen to the synthetic log, thereby causing it to burn out faster. It is well-known that increasing the amount of available oxygen in a combustion reaction increases the rate of reaction, thereby more quickly depleting the reactants, in this case a synthetic firelog. A skilled artisan seeking a means to increase the burn time of a synthetic log would deliberately avoid the Rogers device because it would produce the opposite effect. A *prima facie* case of obviousness cannot be based upon references whose teachings a skilled artisan would deliberately avoid.

The distinction between the teachings of Rogers and the Applicant's invention could not be clearer than in amended claim 11, which now specifically recites a method in which the firelog has a longer total burn time than if the accessory were not used. In stark contrast, if the Rogers device were used with a synthetic log, the total burn time would be shorter, not longer. Thus, even if a skilled artisan were to use the device of Rogers with a synthetic log, despite there being a strong disincentive for doing so, such method would not meet the limitations of claim 11 because it would result in a shorter total burn time. By contrast, Applicant claims a longer total burn time. Because Rogers does not disclose and indeed teaches away from Applicant's claimed method, Applicant respectfully requests that the Examiner withdraw the rejection.

Furthermore, unlike claim 1, claim 11 is a method claim that specifically recites a "synthetic firelog." The references cited by the Examiner do not disclose synthetic firelogs. But the fundamental differences between a natural wood log and a synthetic firelog cannot just be ignored. As alluded above, a synthetic firelog burns better and longer because it includes its own fuel, in the form of a petroleum wax or other combustible material. Thus,

prior art references like Rogers, which deal with increasing airflow to a natural wood fire, are simply inapposite to the present invention.

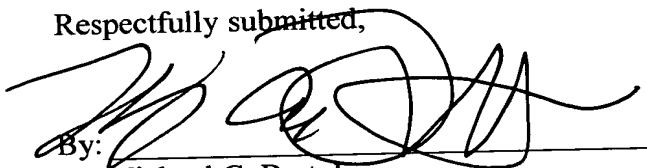
Applicant submits that prior art relevant to the pending claims would be in the form of references that teach an accessory and method of using it with a conventional fireplace grate to increase the total burn time of a synthetic firelog. Applicant respectfully suggests, however, that the Examiner will not find such teachings in the prior art because they belong to the Applicant. Applicant thus deserves a patent for teaching the public his inventive apparatus and method of increasing the burn time of a synthetic log. The Examiner is respectfully requested to pass this case to issue.

Conclusion

It is believed that the above represents a complete response to the Official Office Action and reconsideration is requested. Specifically, Applicant respectfully submits that all pending claims are now in condition for allowance, and Applicant respectfully requests allowance thereof.

In the event that Applicant has overlooked the need for an extension of time or payment of fee, Applicant hereby petitions therefor and authorizes that any charges be made to Deposit Account No. 23-3030, but not to include payment of issue fees. If any questions concerning this application should arise, the Examiner is invited to telephone the undersigned attorney.

Respectfully submitted,



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